STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion	Docket No. 00-0586
Adoption of 83 Ill. Admin. Code 550, "Non-Discrimination in Affiliate Transactions for Gas Utilities"	

ILLINOIS POWER COMPANY'S REPLY COMMENTS ON THE PROPOSED RULES

Joseph L. Lakshmanan, Esq.
500 South 27th Street
Decatur, IL 62521-2200
(217) 362-7449
(217) 362-7458 (facsimile)
Joseph_Lakshmanan@illinoispower.com

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Pursuant to the schedule adopted in the above-referenced proceeding, Illinois Power Company ("Illinois Power" or "IPC") hereby submits its Reply Comments to the Commission's proposed rules for non-discrimination in affiliate transactions for gas utilities ("gas affiliate rules"). Because so many parties' opening comments were along the same lines as Illinois Power's, we are responding here to only a few issues raised by certain parties. Our silence on any particular issue raised by any party should not be viewed as concurrence with that party's position. We reserve the right to respond to any issue in rebuttal comments due March 30, 2001.

In general, we are encouraged that many parties submitted comments suggesting revisions similar to those proposed by Illinois Power. *See generally* Comments filed by Nicor Gas, Ameren, MidAmerican and Peoples Gas. Unfortunately, other parties seek to alter the proposed rules in ways that would be counterproductive and that would make them less compatible with the electric affiliate rules. This lack of compatibility is a substantial issue for combination utilities such as Illinois Power, which will have to comply with different rules depending on which commodity is involved, *even though many of its customers are combination customers.*

We respond to several specific problems below, but first remain concerned with what appears to be a continued misunderstanding by some that advancing competition is about aiding specific competitors as opposed to benefiting consumers. *See* Initial Comments of NIACCA; Comments by the People of the State of Illinois ("AG Comments"). This Commission has already rejected such a premise and should continue to do so now. This Commission concluded in the electric affiliate rules case:

> The Commission has reviewed the extensive record of evidence and testimony, as well the proposals of the parties and concludes that, at this point in the evolution of competition in the Illinois energy market, an approach which only imposes restrictions on the relationship between utilities and their affiliated interests where necessary is warranted. This view is supported by substantial evidence. *The Commission agrees with the assertions of many utility witnesses that enhancing consumer welfare must be the benchmark of any deregulatory scheme and that consumer welfare is enhanced when prices are low and products are varied and plentiful.* The Commission agrees further with witnesses Landon and Kahn, that the only real way to test a market is to observe it over a reasonable period of time and to draw conclusions based upon empirical observations. Through these observations, the Commission hopes to develop over time a better understanding of where restrictions are or are not needed.
>
> In addition, the proposals of parties suggesting strict regulation were subjected to convincing criticism. Rather than judging the market by consumer welfare standards, the parties proposing strict regulation looked to the number of market participants as the most prominent feature of a well functioning market. *In accordance with this view, the rules under this proposed regime were uniform in attempting to "level the playing field" to offset the perceived advantages possessed by the various regulated electric utilities.* This generally called for the installation of a layer of insulation between the incumbent and its affiliates that resulted in imposing costs on the incumbent that would not be borne by new entrants, despite the fact that the new entrants could include affiliates of companies who were regulated in different jurisdictions. There was no plausible reason given for disparate treatment of similarly situated entities at the onset of competition.

Electric Affiliate Rules Order at 25 (June 12, 1998) (emphasis supplied). We urge the Commission to continue with this pro-competitive policy and not take the path urged by others who seek to advantage particular competitors rather than consumers.

Corporate Logo & Joint Advertising. The AG, CUB/Cook County and Blackhawk would like this Commission to restrict the use of common names and logos. They base this, however, on evidence that does not support such a broad rule. The AG, for instance, provides only two instances where apparently customers were confused by Nicor's logo and name. AG's Comments Exs. A & B. Given the large number of customers in Nicor's territory, two instances of confusion (both two years' old) is more a testament to the *lack* of confusion perceived by virtually everyone, rather than evidence supporting a broad rule banning common logos and names. Similarly, CUB/Cook County (at 2) would have the Commission rely on hearsay conversations with competitors rather than follow the rules of evidence. Also, we note that CUB/Cook County (GCI Exs. 1 & 2) rely on selected pre-filed testimony from another case (Nicor's Customer Select case) but fail to point out that cross-examination hearings on this testimony were only held last week. Thus, there is no Proposed Order (much less a final Commission Order) that has found that evidence persuasive or otherwise relied on it.

It was in anticipation of these types of tactics that Illinois Power requested the right to cross-examine witnesses. We continue to believe that a hearing would be beneficial to the Commission prior to its relying on this sort of "evidence" to alter the rule on corporate names and logos. Nonetheless, even without a hearing, the evidence supporting such an alteration is insufficient. Rather than hearsay and two stale complaints, one might have expected evidence in the form of a properly designed and conducted customer survey, with the results submitted along with the initial comments so that other parties could react to it in an orderly process. The lack of such objective evidence further supports our position that a ban is unnecessary.

With regard to a disclaimer proposed by some as an alternative to banning common logos and names, we note that this was proposed and rejected in the electric affiliate rule case.

Compare ICC Dkt. Nos. 98-0013 & 98-0035 HEPO Proposed § 450.20(d) *with* Final Rules adopted by the Commission (deleting that particular subsection). While we were willing to accept a disclaimer in that case, if one were found necessary, imposing a requirement on gas utilities but not electric utilities can only lead to confusion as combination utilities seek to figure out how to comply with the conflicting rules and customers seek to understand why gas affiliates have disclaimers but electric affiliates do not. We also note that the parties proposing disclaimers have provided different language that is aimed at different goals. *Compare* CUB/Cook County Comments at 3 *with* Blackhawk Comments at 1. Before any disclaimer is mandated, the goals should be agreed to and the wording carefully crafted to ensure those goals are met. This, of course, has not occurred.

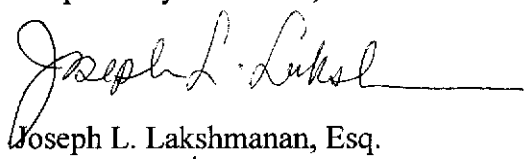
With respect to joint advertising, we do not disagree with a properly tailored restriction (one that restricts the joint marketing and advertising between a gas utility and its affiliated interests in competition with ARGS). No further ban, however, is supported by any evidence in this record. Rather, NIACCA (at 2) complains that such a properly tailored ban "will have a direct and substantial negative impact upon the business of NIACCA members." That, however, is not the relevant inquiry. The relevant question is: will permitting utilities and their affiliates to bring to bear their efficiencies in a market (other than retail gas supply) benefit consumers. The answer is most likely yes: if utilities and their affiliates are less efficient, NIACCA members will lose little business to them, but if they are more efficient, customers will stand to gain the benefits of lower prices and better services and products. This is precisely the pro-competitive rationale that underlies the electric rule on this issue and that should be continued in this case.

Availability of Logs. The AG seeks to provide broad access to the logs mandated by the rules. AG Comments at 4-6. This revision should be rejected. Data contained in the logs could

be used by competitors to tailor competitive offerings to customers while utilities would not have similar access to similar data of those companies. Merely redacting names is not sufficient since other data on the log may be more valuable to a competitor seeking to determine which programs to offer. We agree that access to the data is important to ensure compliance with the rules and do not oppose Commission access (or access in an actual complaint case, where a properly crafted protective order can be imposed on all parties). As for the concern with administrative economy, the AG presents no evidence that the Commission has been flooded with "frivolous and unsubstantiated" complaints. AG Comments at 5. For these reasons, the AG's revision to proposed Section 550.140(c) should be rejected.

In sum, Illinois Power is encouraged that many parties appear to be in substantial agreement with its initial comments. We urge the Commission to continue its pro-competitive policies by promulgating rules that are similar to the electric rules except as necessitated by existing law. In particular, the Commission should reject attempts to alter the electric rules on the basis of insufficient and improper evidence. Nor should the Commission adopt rules that seek to advantage selected competitors, as opposed to benefiting consumers. For these reasons, Illinois Power urges the Commission to adopt the changes proposed in our initial comments and to reject the inconsistent revisions discussed above.

Respectfully submitted,



Joseph L. Lakshmanan, Esq.
500 South 27th Street
Decatur, IL 62521-2200
(217) 362-7449
(217) 362-7458 (facsimile)
Joseph_Lakshmanan@illinoispower.com

Dated: March 9, 2001

VERIFICATION

I, Brian W. Blackburn, Supervisor-Gas Sourcing, being sworn on oath, state that the foregoing Illinois Power Company's Reply Comments are true and accurate to the best of my knowledge, information and belief.

Brian W. Blackburn

Subscribed and sworn to before me this 9th day of March, 2001.

Notary Public

OFFICIAL SEAL
RA A. KROHE
BLIC, STATE OF ILLINOIS
EXPIRES 1-13-2002

CERTIFICATE OF SERVICE

I, Joseph L. Lakshmanan, certify that on the 9th day of March, 2001, I served a copy of Illinois Power Company's Reply Comments by first class mail, from Decatur, Illinois, postage prepaid to the individuals on the service list attached.

Joseph L. Lakshmanan, Esq.

THOMAS M BYRNE
ASSOCIATE GENERAL COUNSEL
AMEREN SERVICES
PO BOX 66149
1901 CHOUTEAU AVE.
ST. LOUIS, MO 63166-6149

LEIJUANA DOSS
ASSISTANT STATE'S ATTORNEY
ENVIRONMENT AND ENERGY DIVISION
COOK COUNTY STATE'S ATTORNEY'S OFFICE
69 W. WASHINGTON, STE. 700
CHICAGO, IL 60602

ERIKA D EDWARDS
PUBLIC UTILITIES BUREAU
1000 W. RANDOLPH ST., 11TH FL.
CHICAGO, IL 60601

DARCY A FABRIZIUS
BLACKHAWK ENERGY SERVICES
PO BOX 2226
WAUKESHA, WI 53187-2226

DAVID I. FEIN
PIPER MARBURY RUDNICK & WOLFE
203 N. LASALLE ST., STE. 1800
CHICAGO, IL 60601-1293

GERARD T FOX
ATTORNEY
PEOPLES GAS/NORTH SHORE
130 E. RANDOLPH DR., 23RD FL.
CHICAGO, IL 60601

ROBERT GARCIA
ILLINOIS COMMERCE COMMISSION
STE. C-800
160 NORTH LASALLE
CHICAGO, IL 60601-3104

KARA K GIBNEY
ATTY. FOR NORTHERN ILLINOIS GAS COMPANY D/B/A NICOR GAS
MAYER BROWN & PLATT
190 S. LASALLE ST.
CHICAGO, IL 60603-3441

GARRET GORNIAK
ACCOUNTING
ILLINOIS COMMERCE COMMISSION
STE. C-800
160 NORTH LASALLE
CHICAGO, IL 60601-3104

EDWARD J GRIFFIN
ATTY. FOR CENTRAL ILLINOIS LIGHT COMPANY
DEFREES & FISKE
200 S. MICHIGAN AVE., STE. 1100
CHICAGO, IL 60604

JAMES HINCHLIFF
ATTORNEY
PEOPLES GAS/NORTH SHORE
130 E. RANDOLPH DR., 23RD FL.
CHICAGO, IL 60601

CHARLES IANNELLO
ILLINOIS COMMERCE COMMISSION
527 E. CAPITOL AVE.
SPRINGFIELD, IL 62701

ROBERT P. JARED
REGULATORY LAW & ANALYSIS
MIDAMERICAN ENERGY COMPANY
106 E. SECOND ST.
PO BOX 4350
DAVENPORT, IA 52808

ROBERT KELTER
CITIZENS UTILITY BOARD
208 S. LASALLE ST., STE. 1760
CHICAGO, IL 60604

MARY KLYASHEFF
ATTORNEY
PEOPLES GAS/NORTH SHORE
130 E. RANDOLPH DR., 23RD FL.
CHICAGO, IL 60601

STEPHEN J MATTSON
ATTY. FOR NORTHERN ILLINOIS GAS COMPANY D/B/A NICOR GAS
MAYER BROWN & PLATT
190 S. LASALLE ST.
CHICAGO, IL 60603-3441

KATIE PAPADIMITRIU
160 N. LASALLE ST., STE. C-800
CHICAGO, IL 60601

JOHN J REICHART
OFFICE OF GENERAL COUNSEL
ILLINOIS COMMERCE COMMISSION
160 N. LASALLE ST.
CHICAGO, IL 60601

CHRISTOPHER J. TOWNSEND
PIPER MARBURY RUDNICK & WOLFE
203 N. LASALLE ST., STE. 1800
CHICAGO, IL 60601-1293

W MICHAEL SEIDEL
DEFREES & FISKE
200 S. MICHIGAN AVE., STE. 1100
CHICAGO, IL 60604

NICK T SHEA
DIRECTOR, RATES & REGULATORY AFFAIRS
CENTRAL ILLINOIS LIGHT COMPANY
300 LIBERTY ST.
PEORIA, IL 61602

SCOTT STRUCK
ACCOUNTING
ILLINOIS COMMERCE COMMISSION
527 E. CAPITOL AVE.
SPRINGFIELD, IL 62701

JANIS VONQUALEN
ILLINOIS COMMERCE COMMISSION
527 E. CAPITOL AVE.
SPRINGFIELD, IL 62701

BILL VOSS
ACCOUNTING
ILLINOIS COMMERCE COMMISSION
527 E. CAPITOL AVE.
SPRINGFIELD, IL 62701

TIMOTHY P WALSH
ATTORNEY
PEOPLES GAS/NORTH SHORE
130 E. RANDOLPH DR., 23RD FL.
CHICAGO, IL 60601

DONALD L. WOODS
HEARING EXAMINER
ILLINOIS COMMERCE COMMISSION
527 E. CAPITOL AVE.
SPRINGFIELD, IL 62701